



**U S Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to Public Notice No.

Issuance Date: **October 4, 2007**

**LRH-2006-2326-OHR**

Stream:

Closing Date: **November 3, 2007**

**Unnamed tributary of Neal Run**

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

**PUBLIC NOTICE:** The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**REGULATORY PROGRAM:** Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

**SECTION 10:** The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

**SECTION 404:** The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the U. S., including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**TO WHOM IT MAY CONCERN:** The following application has been submitted for a Department of the Army After-The Fact Permit, under the provisions of Section 404 of the Clean Water Act (CWA), for unauthorized placement of dredged and/or fill material within waters of the U.S. in conjunction with the applicant's commercial development site.

**APPLICANT:** Endurance Group, LLC  
Powell Law Office  
5th & Green Street  
Parkersburg, WV 26101

**LOCATION:** The project site has impacted an unnamed tributary of Neal Run and a secondary tributary of the above stream, north of Lubeck, Wood County, West Virginia. The project site is

on the South Parkersburg USGS quadrangle at approximate Latitude 39° 14' 52", Longitude 81° 36' 54", at the intersection of WV State Routes 68 95. A location map is attached as **Figure 1**.

**DESCRIPTION OF THE PROPOSED WORK:** The applicant has submitted an application for an after-the-fact permit for placement of dredged and/or fill material within 600 linear feet (LF) of perennial stream and 465 LF of an intermittent stream, in conjunction with their proposed 35-acre Neal Run Crossing Commercial Subdivision. The proposal (shown on attached Figures 2 through 4) includes excavation and placement of fill material within the project site in order to establish a development base that the applicant expects would attract yet unidentified retail and commercial businesses. One restaurant is now being constructed on the northeastern portion of the site. In developing the site, the applicant excavated material from the adjacent sloped areas (creating a terraced area) and placed the material as fill within the lower areas to an approximate elevation of the access road. During this work, 450 LF of an intermittent stream was filled and relocated. The new stream channel (325 LF), was designed to carry a 50-year storm event. As part of the project, the applicant placed 120 LF of culvert and overfill within the perennial tributary to Neal Run. Part of this culvert/fill serves as a base for the constructed access road from State Route 68 into the project site. The culvert was sized to pass a 50-year frequency storm event. The placement of fill material within the project area has further impacted 110 LF upstream of the culvert and 370 LF downstream of the culvert, including construction of an effluent channel for a perimeter drainage ditch. To manage surface flows, a second perimeter drainage ditch was also constructed, terminating within the intermittent stream (impacting 15 LF of stream). According to the proposal, utilities to be installed into the site would not impact waters of the U.S.

A Cease and Desist Order was sent to the applicant requiring the applicant to cease all work in waters of the United States. Upon receipt of the Cease and Desist Order, the applicant stopped work in waters of the United States. The applicant has submitted a request for an after-the-fact permit. As required by the rules and regulations governing the Department of the Army permit program, it was determined the work did not present an immediate threat to life or property and an after-the-fact application was accepted. All investigations and legal proceedings will be suspended pending outcome of the permit review process. This application will be evaluated on its own merits and no consideration will be given to the applicant's unauthorized work activities or prior expenditures.

**ALTERNATIVE ANALYSIS:** This project is not considered to be water dependent; therefore, the applicant is required to demonstrate that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant has provided an alternatives analysis that is currently being reviewed. No permit will be issued until our review of their alternatives analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

**MITIGATION PLAN:** No compensatory mitigation plan (CMP) has been submitted to date. The applicant has stated a CMP for this project is presently being prepared.

**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification is required for the proposed project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection. This notice also serves as the Corps of

Engineers' request to the West Virginia Department for Environmental Protection to act on the Section 401 Water Quality Certification for the following application.

**HISTORIC AND CULTURAL RESOURCES:** Requirements under Section 106 of the National Historic Preservation Act of 1966 must be fulfilled prior to issuance of any DA permit. The applicant is not aware of any historic properties or cultural/archaeological resources in or near the project site, nor are they aware of any such resources found during construction. The National Register of Historic Places lists no properties in the vicinity of the proposed project. A copy of the permit application package will be sent to the State Historical Properties Office (SHPO) for review. This public notice serves as coordination with the West Virginia Division of Culture and History for information concerning whether any historic properties listed or eligible for listing in the National Inventory of Historic Places may be affected by the activity, pursuant to Section 106 of the National Historic Preservation Act.

**ENDANGERED/THREATENED SPECIES REVIEW:** The streams impacted or proposed to be impacted by the proposed project are not listed by the U.S. Fish & Wildlife Service as having or may have populations of threatened or endangered aquatic species. However, the project area lies within the range of the endangered Indiana bat (*Myotis sodalis*) and may or may have occupied summer habitat in the project area. This public notice will serve as coordination with the USFWS for information concerning the proposed project's potential impacts on any listed or proposed to be listed endangered or threatened species, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

**PUBLIC INTEREST REVIEW AND COMMENT:** This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal.

To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act.

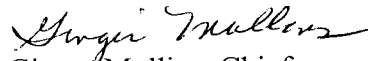
Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

**SOLICITATION OF COMMENTS:** The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the District Engineer may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing.

The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

Comments and requests for additional information should be submitted to Richard Berkes, Project Manager, South Regulatory Section, CELRH OR-FS; U. S. Army Corps of Engineers Huntington District; 502 Eighth Street; Huntington, West Virginia 25701-2070. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Richard Berkes, South Regulatory Section, CELRH OR-FS; U. S. Army Corps of Engineers Huntington District; 502 Eighth Street; Huntington, West Virginia 25701-2070. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available under the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Richard Berkes of the South Regulatory Section at 304-399-6909.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)



**FOX**  
Engineering, PLLC

NEAL RUN CROSSING  
ENDURANCE GROUP, LLC.  
1333 MARKET STREET  
PARKERSBURG, WV 26101

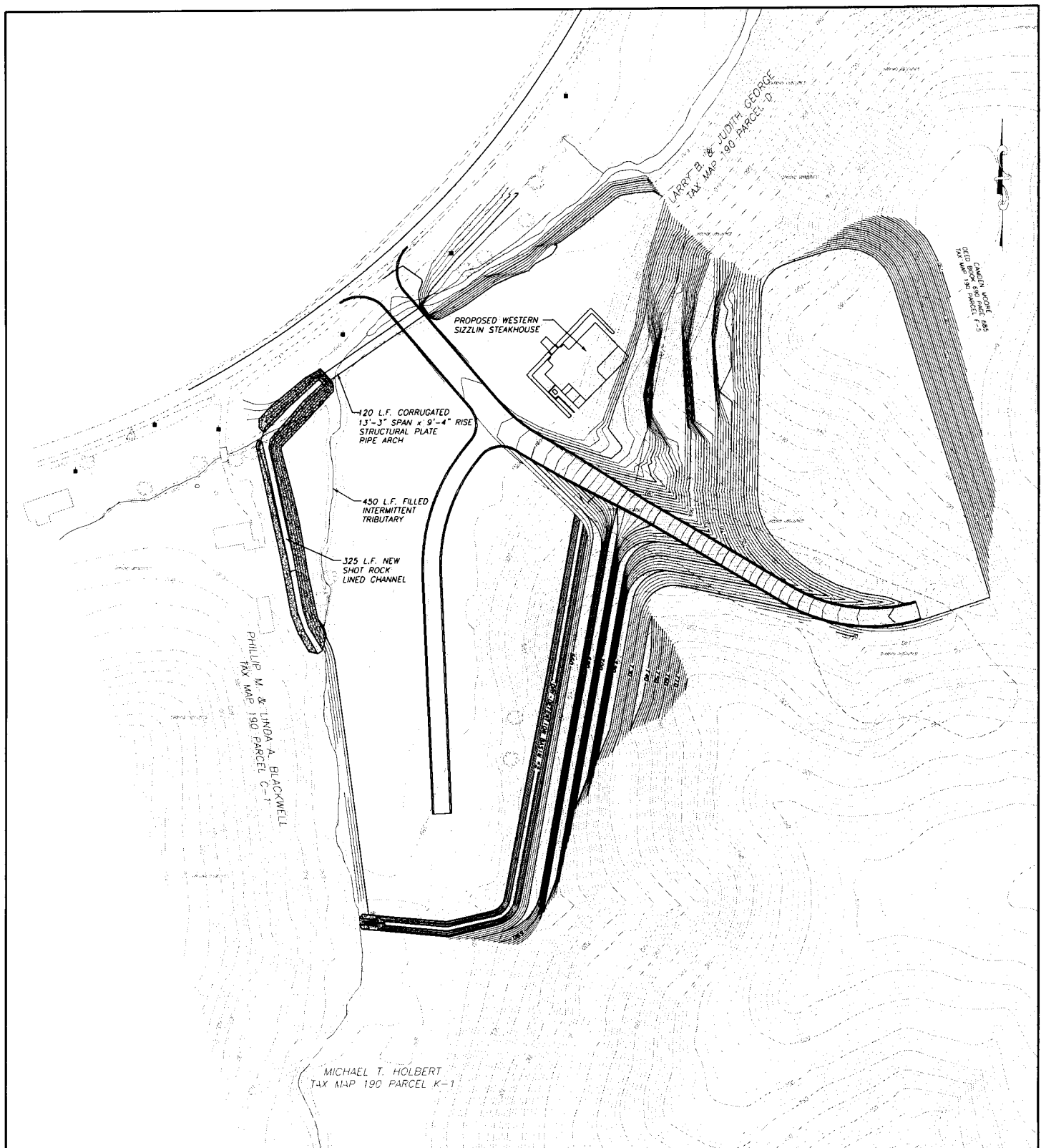


FIGURE 2 - SITE PLAN



NEAL RUN CROSSING  
 ENDURANCE GROUP, LLC.  
 1333 MARKET STREET  
 PARKERSBURG, WV 26101

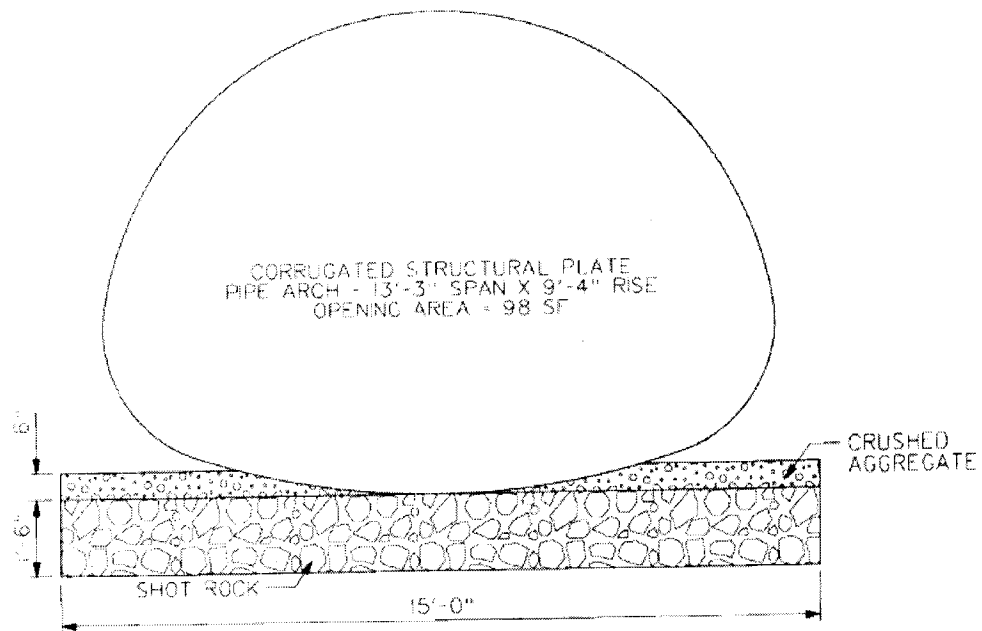


FIGURE 3 - TYPICAL PIPE ARCH CROSS SECTION



NEAL RUN CROSSING  
ENDURANCE GROUP, LLC.  
1333 MARKET STREET  
PARKERSBURG, WV 26101

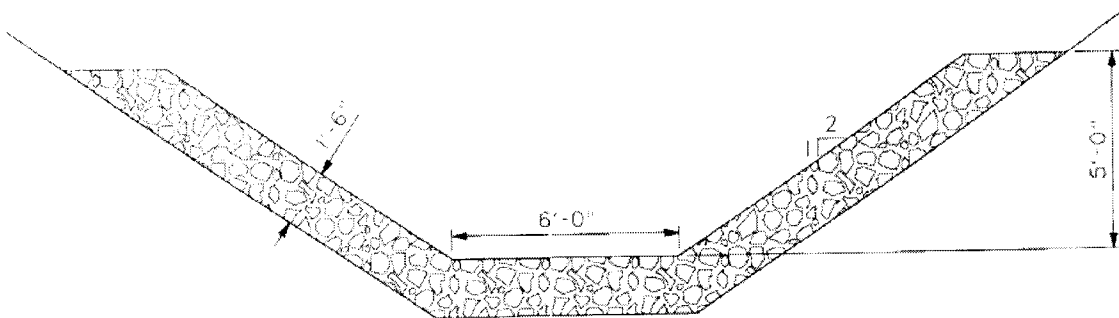


FIGURE 4 - TYPICAL STREAM RELOCATION CROSS SECTION



NEAL RUN CROSSING  
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1333 MARKET STREET  
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